

William F. “Chip” Merlin, Jr.  
CA Bar No. 275936  
[cmerlin@merlinlawgroup.com](mailto:cmerlin@merlinlawgroup.com)  
**MERLIN LAW GROUP**  
777 S. Harbour Island Blvd.,  
Suite 950  
Tampa, FL 33602  
Telephone: (813) 229-1000  
Facsimile: (813) 229-3692

Victor J. Jacobellis  
CA Bar No. 278988  
[vjacobellis@merlinlawgroup.com](mailto:vjacobellis@merlinlawgroup.com)  
Daniel J. Veroff  
CA Bar No. 291492  
[dveroff@merlinlawgroup.com](mailto:dveroff@merlinlawgroup.com)  
**MERLIN LAW GROUP**  
1160 Battery St East, Suite 100  
San Francisco, CA 94111  
Telephone: (415) 851-2300  
Facsimile: (415) 960-3882

*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

STEVEN BAKER AND MELANIA KANG  
D/B/A CHLOE’S CAFE, a California general  
partnership, individually and on behalf of  
themselves and all others similarly situated,

Plaintiff,

vs.

OREGON MUTUAL INSURANCE  
COMPANY, an Oregon Corporation,

Defendant.

Adam M. Moskowitz (*pro hac vice*)  
[adam@moskowitz-law.com](mailto:adam@moskowitz-law.com)

Adam A. Schwartzbaum (*pro hac vice*)  
[adams@moskowitz-law.com](mailto:adams@moskowitz-law.com)

Howard Bushman  
(*Pro Hac Vice* Admission Pending)  
[howard@moskowitz-law.com](mailto:howard@moskowitz-law.com)

**THE MOSKOWITZ LAW FIRM**  
2 Alhambra Plaza, Suite 601  
Coral Gables, FL 33134  
Tel: (305) 479-5508

Case No. 3:20-cv-05467-LB

**PLAINTIFFS’ RESPONSE TO  
MOTION OF *AMICUS CURIAE*  
UNITED POLICYHOLDERS TO  
SUBMIT MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
OPPOSITION TO DEFENDANT’S  
MOTION TO DISMISS AND, IN THE  
ALTERNATIVE, MOTION FOR  
SUMMARY JUDGMENT**

Date: December 17, 2020  
Time: 9:30 a.m.  
Location: Magistrate Judge  
Laura Beeler, Via Webinar

1 Plaintiffs, Steven Baker and Melania Kang d/b/a Chloe's Cafe ("Plaintiffs" or "Chloe's  
2 Cafe") submit this response to the motion of *amicus curiae* United Policyholders to submit  
3 memorandum of points and authorities in opposition to Defendant's motion to dismiss and, in  
4 the alternative, motion for summary judgment (the "Motion").

## 5 I. ARGUMENT

6 Plaintiffs respectfully ask the Court to exercise its broad discretion to grant the motion  
7 and consider the arguments and additional authorities raised by United Policyholders. *See*  
8 *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982) ("The district court has broad discretion to  
9 appoint amici curiae. We may reverse an order appointing amici only if the district judge has  
10 abused his discretion."), *disapproved on other grounds, Montijo v. Swaney*, 754 Fed. App'x 522  
11 (9th Cir. 2018).

12 The memorandum attached to United Policyholder's Motion raises important points  
13 relevant to the interests of the policyholders United Policyholders represents, and it provides the  
14 unique perspective of a public interest organization dedicated to the rights of consumers who  
15 purchase insurance. In deciding Oregon Mutual's motion to dismiss this class action lawsuit—a  
16 suit implicating the rights of Oregon Mutual's insureds nationwide—this Court should receive  
17 the benefit of all of the arguments and authorities that support policyholders' claims. Were the  
18 Court to deny the Motion and grant the motion to dismiss, United Policyholders would likely be  
19 granted leave to file an amicus brief before the Ninth Circuit and would make the same arguments  
20 there. Instead of requiring United Policyholders to undertake this unnecessary extra step, the  
21 Court should instead consider here the California authorities and arguments presented by United  
22 Policyholders, as Courts in this district have repeatedly done in similar situations. *See, e.g., Am.*  
23 *Civil Liberties Union of N. Ca. v. Burwell*, No. 16-cv-03539-LB, 2017 WL 4551492, at \*7 (N.D.  
24 Cal. Oct. 11, 2017) (Beeler, Mag. J.) (granting motion by several states to submit an *amicus* brief  
25 in support of opposition to plaintiff's request to amend complaint); *Music Group Macao*  
26 *Commercial Offshore Ltd. v. Does*, 82 F. Supp. 3d 979 (N.D. Cal. March 2, 2015) (Beeler, Mag.  
27 J.) (granting motion by Public Citizen, Inc. to file *amicus* brief opposing enforcement of the  
28

1 plaintiff's subpoenas, "thank[ing] Public Citizen for its excellent and informative brief[.]" and  
2 "weigh[ing] Public Citizen's concerns in ruling on the subpoenas").

## 3 II. CONCLUSION

4 For the reasons set forth herein, Plaintiffs respectfully suggest that the Court grant the  
5 motion and consider the points and authorities raised by United Policyholders.

6  
7 Dated: December 9, 2020

Respectfully submitted,

8  
9 By: /s/ Victor J. Jacobellis

10 Victor J. Jacobellis  
CA Bar No. 278988  
[vjacobellis@merlinlawgroup.com](mailto:vjacobellis@merlinlawgroup.com)  
11 Daniel J. Veroff  
CA Bar No. 291492  
[dveroff@merlinlawgroup.com](mailto:dveroff@merlinlawgroup.com)  
12 **MERLIN LAW GROUP**  
1160 Battery St East, Suite 100  
San Francisco, CA 94111  
Telephone: (415) 851-2300  
Facsimile: (415) 960-3882

13 William F. "Chip" Merlin, Jr.  
CA Bar No. 275936  
[cmerlin@merlinlawgroup.com](mailto:cmerlin@merlinlawgroup.com)  
14 **MERLIN LAW GROUP**  
777 S. Harbour Island Blvd., Suite 950  
Tampa, FL 33602  
Telephone: (813) 229-1000  
Facsimile: (813) 229-3692

15 Adam M. Moskowitz (*pro hac vice*)  
Florida Bar No. 984280  
[adam@moskowitz-law.com](mailto:adam@moskowitz-law.com)  
16 Adam A. Schwartzbaum (*pro hac vice*)  
Florida Bar No. 93014  
[adams@moskowitz-law.com](mailto:adams@moskowitz-law.com)  
17 Howard M. Bushman  
(*Pro Hac Vice* Admission Pending)  
Florida Bar No. 0364230  
[howard@moskowitz-law.com](mailto:howard@moskowitz-law.com)  
18 **THE MOSKOWITZ LAW FIRM, PLLC**  
2 Alhambra Plaza, Suite 601  
Coral Gables, FL 33134  
Telephone: (305) 740-1423  
19 *Attorneys for Plaintiff*